

**REMARKS**

Claims 1, 3, and 6-21 remain pending in this application. Claims 2 and 4-5 have been canceled. Claims 1, 8, 16, and 18 have been amended.

**I. § 102 AND § 103 REJECTIONS**

U.S. Pat. No. 5,843,980 to Hall et al. (Hall) and PCT Pub. No. WO 98/50045 (PCT Publication) do not disclose or suggest an antibiotic/analgesic formulation containing an antibiotic from the florfenicol class of compounds, namely florfenicol or chloramphenicol, as claimed by Applicant. Even if Hall and the PCT Publication are combined, they do not disclose or suggest a formulation containing florfenicol or chloramphenicol. The Patent and Trademark Office's burden of establishing a *prima facie* case of obviousness is not met unless "the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 26 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1993)(quoting In re Rinehart, 189 U.S.P.Q. 143,147 (C.C.P.A. 1976)). Applicant submits that a *prima facie* case of obviousness for rejecting the pending claims is not established with these references.

The PCT Publication's mere mention that antimicrobials can be used in its formulation is not a sufficient suggestion to teach one of ordinary skill in the art that an antibiotic from the florfenicol class of compounds would be compatible with flunixin meglumine or dexamethasone in a systemic formulation. In re Jones, 958 F.2d 347, 350 (Fed. Cir. 1992), states that "though Richter discloses the potentially infinite genus of 'substituted ammonium salts' of dicamba, and lists several such salts, the salt claimed here is not specifically disclosed. Nor... is the claimed salt sufficiently similar in structure to those specifically disclosed in Richter as to render it *prima facie* obvious." Likewise, the PCT Publication and Hall do not disclose or suggest compounds

of a sufficiently similar structure to the florfenicol class of compounds to render Applicant's claims obvious. In fact, the florfenicol class of compounds function and interact in an entirely different way from the antimicrobial compounds disclosed by the cited references. More specifically, this class of compounds binds to the 50 S subunit of the 70 S ribosome and impairs peptide transferase activity wherein binding of aminoacyl-tRNA to the active site of peptide transferase is prevented. Further, the cited references provide no teaching that florfenicol or chloramphenicol would be compatible when dissolved in a systemic analgesic formulation.

Corning Glass Works v. Sumitomo Electric U.S.A. Inc., 9 USPQ2d 1962, 1970 (Fed. Cir. 1989) is also analogous to the present situation. In Corning Glass Works, defendant Sumitomo argued "that the use of the term 'dopant' in the Japanese publication, together with a listing of polyvalent metal oxide dopants, 'does not exclude germania.'" The Court reasoned that "[u]nder Sumitomo's theory, a claim to a genus would inherently disclose all species." The Court went on to state "[w]e find Sumitomo's argument wholly meritless whether considered under section 102(b) or under 35 U.S.C. §103...." For these reasons, Applicant submits that the pending claims are not anticipated or made obvious by the cited references.

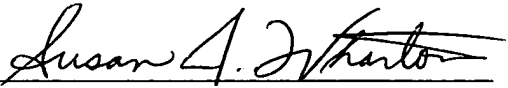
Still further, the addition of a preservative, an antioxidant, a solubilizing agent, a buffer and/or a complexing agent to Applicant's formulation provides specific advantages, as pointed out in the specification. Neither Hall nor the PCT Publication discloses or suggests the benefits of adding these components to an antibiotic/analgesic formulation

## II. CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims are in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments which need be

addressed in order to obtain allowance, please contact the undersigned attorney at the number listed below.

Respectfully submitted,

By: 

Susan J. Wharton, Reg. No. 41,524  
STINSON MORRISON HECKER LLP  
1201 Walnut, Suite 2800  
Kansas City, MO 64106-2150  
Telephone: (816) 842-8600  
Facsimile: (816) 691-3495